

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

4 IN RE CUSTOMS AND TAX  
5 ADMINISTRATION OF THE KINGDOM  
6 OF DENMARK  
7 (SKATTEFORVALTNINGEN) TAX  
8 REFUND SCHEME LITIGATION,

9 18 MD 2865 (LAK)

10 Conference

11 -----x  
12 New York, N.Y.  
13 March 28, 2024  
14 2:20 p.m.

15 Before:

16 HON. LEWIS A. KAPLAN,

17 District Judge

18 APPEARANCES

19 HUGHES HUBBARD & REED LLP  
20 Attorneys for Plaintiff SKAT  
21 BY: WILLIAM R. MAGUIRE  
22 NEIL J. OXFORD

23 KOSTELANETZ & FINK, LLP  
24 Attorneys for Defendants Azalea Pension Plan, et al.  
25 BY: SHARON McCARTHY

26 WILMER CUTLER PICKERING HALE AND DORR LLP  
27 Attorneys for Defendants Avanix Management LLC, et al.  
28 BY: PETER G. NEIMAN  
29 ANDREW SCOTT DULBERG

30 KATTEN MUCHIN ROSENMAN LLP  
31 Attorneys for Defendants Robert Klugman and  
32 RAK Investment Trust  
33 BY: DAVID GOLDBERG  
34 MICHAEL M. ROSENSAFT

## 1 APPEARANCES (cont'd)

2 DEWEY PEGNO &amp; KRAMARSKY LLP

3 Attorneys for Defendant Michael Ben-Jacob

4 BY: THOMAS E.L. DEWEY

5 -and-

6 KEKER VAN NEST &amp; PETERS LLP

7 BY: ELLIOT R. PETERS

8 K&amp;L GATES LLP

9 Attorneys for Defendants American Investment Group of New  
10 York, L.P. Pension Plan, Stacey Kaminer, Robert Crema.

11 Acer Investment

12 BY: JOHN C. BLESSINGTON

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1 (Case called)

2 THE COURT: Folks, I've pretty much made up my mind  
3 what we are going to do. But if anybody wants five minutes to  
4 address that issue in terms of what we are going to try first,  
5 I'll entertain it.

6 Suspense is killing all of you.

7 We are going to go with SKAT's modified trial 1  
8 proposal. We are going to try the Markowitzes, the  
9 Merkensteijns, Mr. Klugman, and, subject to one contingency,  
10 Mr. Ben-Jacob on January 7.

11 Does that work for everybody?

12 I have also looked carefully at the proposed schedule  
13 for pretrial proceedings. I am going to make some changes.  
14 For one thing, my goal is not to maximize the paperwork, which  
15 it appears may have entered into this inadvertently or  
16 otherwise. I will start the schedule where you proposed to  
17 start it. I will compress it some. And you should have an  
18 order on that earlier next week.

19 Anything else we can usefully accomplish while we are  
20 all here?

21 Any chance of getting these cases settled? Where are  
22 we?

23 MR. MAGUIRE: If it please the Court, Bill Maguire for  
24 the plaintiff SKAT.

25 Your Honor, the door is always open to SKAT in terms

1 of settlement. We have settled a number of cases.

2 In terms of the SKAT proposed trial 1 that your Honor  
3 is scheduling for January 7, there is no active settlement  
4 discussions going on with respect to those defendants right  
5 now.

6 THE COURT: Might be time, folks. Might be time.

7 Ms. McCarthy.

8 MS. McCARTHY: Your Honor, just a quick question.  
9 Your Honor, when you say you may compress the schedule, does  
10 that mean you may eliminate some of our things or -- yes?

11 THE COURT: Modify or eliminate.

12 This schedule is very -- you probably won't agree with  
13 this characterization, but very considerate of the attorneys'  
14 needs and, although it was not designed with malice or  
15 forethought, very unmindful of the fact that and my two law  
16 clerks do all the work at my end, and there is not enough time  
17 for me to do my work on this schedule. I am very well aware of  
18 what I am going to have to do in this case, so I am going to  
19 compress your time and expand mine.

20 MS. McCARTHY: Understood. I was wondering if you are  
21 going to eliminate any of the things we want to make motions  
22 about. Because, if so, we would want to be heard.

23 THE COURT: I have not reached a final determination  
24 on that.

25 But the first thing that struck me has to do with the

1 severance motion. If somebody wants to make that motion, I am  
2 not going to stop you, but it is going to accomplish -- in all  
3 likelihood, barring unforeseen circumstances or knowledge I  
4 don't yet have, it's not likely to be terribly fruitful.

5 MS. McCARTHY: Understood, your Honor.

6 THE COURT: Wouldn't be the first case with  
7 defendants' positions in a multidefendant case being tried  
8 together. It just wouldn't. And it's manageable, I think.

9 MS. McCARTHY: The one thing, your Honor, I just  
10 wanted to bring to the Court's attention, I am sure the Court  
11 has been -- maybe not. But the Court may be aware that  
12 Mr. Shah is on trial right now in Denmark and --

13 THE COURT: To say the least.

14 MS. McCARTHY: He has testified and responded to the  
15 questions by SKAT.

16 Previous to his arrival in Denmark he had been in  
17 Dubai which, as your Honor may know, is not a contracting party  
18 to the Hague Convention, so we had no opportunity then to seek  
19 his deposition when he was in Dubai. The parties would very  
20 much like to consider whether or not to try to seek his  
21 deposition between now and trial, given the changed  
22 circumstances and the fact that he is speaking and has answered  
23 questions, so appears not to be resting on his rights not to do  
24 that.

25 Unfortunately, right now it's our understanding there

1 is no transcript of his testimony. We were just getting bits  
2 and pieces from press reports. But it would help us to  
3 determine whether or not we want to try to do that, and we  
4 understand we'd have to do it very quickly. If SKAT is able to  
5 provide any sort of summary that's been created about his  
6 testimony, that would be very useful to us.

7 THE COURT: I am not going to stop you right here and  
8 now. I want the case to move, but I'm not blind to the  
9 possible significance of testimony from Mr. Shah. I am a  
10 little puzzled about whether there is going to be a transcript,  
11 even if there isn't one at this moment and, if there were, how  
12 that might help or affect what we have to do here. I just  
13 wonder how the Danish courts deal with appeals and the like if  
14 they don't have a transcript. I know nothing about Danish  
15 procedure.

16 MS. McCARTHY: We will speak with counsel for the  
17 plaintiff to see if there is some way we can get a better sense  
18 of what he said on the witness stand other than what's in the  
19 press reports, and that would be, I think, helpful to our  
20 decision as a strategic matter whether or not we will seek the  
21 deposition.

22 THE COURT: Sure. Demonstrating my utter ignorance  
23 about Danish law, other than the one or two little pieces you  
24 have put in front of me over and over again, it's a similar law  
25 currently, right? So the questioning is not done by counsel,

1 or is it? Is it done by a judge?

2 MS. McCARTHY: I think we would do the questioning,  
3 your Honor.

4 THE COURT: No. I'm talking about the Danish  
5 proceedings that are going on now.

6 MS. McCARTHY: The Danish proceedings -- counsel for  
7 SKAT, I understand, has been asking the questions? No. To not  
8 you guys, but the people that are in Denmark. No. Prosecutor.  
9 Sorry.

10 THE COURT: Prosecutor. It's a criminal case in  
11 Denmark.

12 Now I know 5 percent more than I knew before.

13 MS. McCARTHY: Sorry about that.

14 THE COURT: Danish procedure.

15 Anything else that I should know?

16 MR. NEIMAN: Your Honor, there is one issue that's  
17 listed in the letter that you got from plaintiffs' counsel that  
18 they noted was open, which has to do with whether there are  
19 going to be kind of preliminary instructions to the jury on  
20 some of the key legal issues so that the jury has some  
21 framework for deciding and understanding the facts that are  
22 being presented to them. We think that would be pretty useful  
23 for the jury and, frankly, pretty useful for the parties to  
24 know how those kind of key legal issues are going to get  
25 resolved before we present our evidence.

1                   THE COURT: I wouldn't be at all surprised, but I am  
2 not ready to grapple with that right now.

3                   You all ought to be very much aware that I will take a  
4 special verdict in this case. And what I always tell my law  
5 clerks is the very first thing you ought to do is think the  
6 case through beginning to end and draft the verdict form and  
7 then start thinking about what the instructions look like. I  
8 commend that to all of you. It would be highly desirable to  
9 have an agreed verdict form in this case.

10                  MR. NEIMAN: We will work with plaintiffs to see if we  
11 can agree on that.

12                  THE COURT: If there is nothing else, thank you all  
13 for coming down, and this too will end.

14                  (Adjourned)

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